

**BOARD OF PERSONNEL APPEALS**  
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STATE OF MONTANA  
BEFORE THE BOARD OF PERSONNEL APPEALS

IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 25-2000:

ANACONDA POLICE PROTECTIVE ASSOCIATION, OR OFFICERS,	)	
AGENTS, REPRESENTATIVES, AND/OR MEMBERS OF THE	)	Case No. 1959-2000
ANACONDA POLICE PROTECTIVE ASSOCIATION,	)	
	)	
Complainants,	)	
	)	
- vs -	)	ORDER OF REMAND
	)	
ANACONDA-DEER LODGE COUNTY,	)	
Defendant.	)	

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IN THE MATTER OF THE UNFAIR LABOR PRACTICE CHARGE NO. 2-2001:

ANACONDA-DEER LODGE COUNTY,	)	
	)	Case No. 1044-2001
Petitioner,	)	
	)	
- vs -	)	
	)	
ANACONDA POLICE PROTECTIVE ASSOCIATION, OR OFFICERS,	)	
AGENTS, REPRESENTATIVES, AND/OR MEMBERS OF THE	)	
ANACONDA POLICE PROTECTIVE ASSOCIATION,	)	
	)	
Defendants.	)	

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The above matter came before the Board of Personnel Appeals (Board) on September 27, 2002, in Great Falls, Montana at 1:30 p.m. The matter was before the Board for consideration of the "Union's Exception to Finding and Conclusion on Attorney Fees and Costs" dated April 23, 2002 and "Anaconda-Deer Lodge County's Exceptions to Findings of Fact, Conclusions of Law and Recommended Order" dated April 24, 2002. Thus, both parties submitted timely appeals to the April 5, 2002, "Findings of Fact; Conclusions of Law; and Recommended Order" submitted by Hearing Officer Michael T. Furlong

Timothy McKittrick was present and represented the Anaconda Police Protective Association. Present and representing the Anaconda-Deer Lodge County was Michael Dahlem.

After a review of the record and consideration of the arguments, the Board concludes and orders as follows:

1. IT IS HEREBY ORDERED that the findings of fact numbered 80 through 85 are set aside. Such "findings" are inappropriate because they are, actually, conclusions of law. As such, the designated "findings" are not necessary to the decision in this case.
2. IT IS FURTHER ORDERED that this case is hereby remanded with the following instructions:
  - A. The Hearing Officer must reconsider his decision in light of the case of *N.L.R.B v. MacMillan Ring-Free Oil Co., Inc.*, 394 F.2d 26, 33 (9th Cir. 1968), wherein the circuit court held:

To recapitulate, then, we hold that while evidence of events occurring more than six months before the filing of a charge may be used to "shed light" upon events taking place within the six-month period, the evidence of a violation drawn from within that period must be reasonably substantial in its own right. Where, as here, that condition is not met, it is impermissible under the policies embodied in section 10(b) for a finding of an unfair labor practice to be justified by primary reliance on the earlier events. Thus the Board's conclusion that MacMillan improperly refused to bargain with the union during the applicable limitations period cannot be upheld.

B. Specifically, the Hearing Officer must determine whether actions which occurred more than six months prior to the filing of the charge were considered to "shed light" on the case and whether using the above guidance of *MacMillan Ring* there was a basis for the unfair labor practice charge.

DATED this \_\_\_\_\_ day of October, 2002.

BOARD OF PERSONNEL APPEALS

By: \_\_\_\_\_  
Jack Holstrom  
Presiding Officer

Board members Holstrom, Schneider, Reardon and Johnson concur.

Board member O'Neill absent